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COMPARISON OF LEGAL PERSPECTIVES OF DIGITAL FINANCING AGREEMENTS BASED ON ISLAMIC CONTRACT LAW AND AGREEMENT LAW IN THE INDONESIAN CIVIL CODE

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Abstract

Research Aims: The purpose of this study is to analyze the legal framework required to regulate the implementation of financial technology (fintech), particularly peer-to-peer lending platforms, in order to protect the public from illegal digital financing practices. This study highlights the importance of aligning positive law especially contract law under the Civil Code with Islamic contract law principles, given that many existing digital financing practices minimally apply sharia values.

Design/Methodology/Approach: This research employs a legal normative approach using a conceptual framework and statutory analysis. It examines the coexistence of state law and Islamic law within society to provide a comprehensive understanding of regulatory needs in sharia-based digital financing.

Research Findings: The study finds that there are fundamental differences in the concept of lawful cause between conventional and sharia contracts. In conventional contracts, legal validity is determined by whether the agreement does not violate the law, morality, or public order. In contrast, sharia contracts must additionally ensure conformity with Islamic legal sources (the Qur'an and Sunnah). This difference underscores the need for a regulatory framework that accommodates both legal systems in digital financing platforms.

Theoretical Contribution/Originality: This study contributes to the academic discourse by linking contract law theory with fintech practices, offering a deeper understanding of how dual legal systems state law and Islamic law can coexist in regulating digital financing. It expands the literature on sharia-compliant fintech governance and emphasizes the necessity of legal harmonization in the growing digital financial ecosystem.

Practitioners/Policy Implications: The study highlights the necessity for the state to establish clear and integrated regulatory standards that ensure both legal and sharia compliance in digital financing. Strengthening supervision, certification, and compliance mechanisms is essential to prevent illegal fintech operations and protect consumers.

Research Limitations/Implications: The research is conceptual and normative in nature, relying on legal analysis rather than empirical field data. Further empirical studies are encouraged to evaluate the implementation effectiveness of integrated sharia and conventional legal frameworks in fintech operations.

Keywords: Digital Financing, Islamic Contract Law

Introduction

The world population currently reaches 8 billion with a personal mobile phone usage rate of 5.6 billion people, this data shows that 69.4% of people have used mobile phones in their daily lives, not much different from the use of the Internet which has reached 5.35 billion people with a percentage rate of 66.2% of people have used the internet currently from various generation phases. The rapid development of the digital industry is also evident in Indonesia, a developing country with the world's fourth-largest population, making it a highly promising target for the digital industry, marked by the increasing use of digital devices. According to the data described by We Are Social, the total population of Indonesia is 278.7 million. However, the use of mobile phones exceeds the population by 353.3 million users, which represents a 126.8% increase over the population. It appears that there has been a shift towards the trend of digitalizing daily life activities, with internet users reaching 185.3 million, meaning 66.5% of the Indonesian population uses the Internet. Those who are active as social media users are 139 million people which describes 49.9% of the total population of Indonesia already using social media as a new culture of interacting with others in everyday life. (We Are Social Indonesia, 2025; Hasanah et al., 2025)

This data shows a significant increase compared to 2020, with each increase exceeding 1%. Wimboh Santoso, Chairman of the Board of Commissioners of the Financial Services Authority (OJK), stated in a webinar titled "Digital Banking: Solutions for Easy Transactions Amidst the Pandemic" held on Wednesday, June 30, 2021, that "Indonesia is projected to become the number one digital economy in Southeast Asia by 2025, with a digital transaction contribution of US$124 billion or Rp. 1,736 trillion." The current number of transactions supports this. The number of digital payment transactions has reached US$12.9 million, with an annual value of digital financing transactions reaching US$35.72 billion. (May/Un, 2021) Many financial technology business activities have adopted banking functions, including the specific function of Sharia banking, namely as a Sharia Philanthropic Institution. However, these activities have not been accompanied by a clear legal basis since the inception of financial technology. This is because the nature of financial technology is to disrupt the habits, cultures, and even regulations that incumbents, such as banking and financial institutions, must follow and adhere to. Consequently, contract law has been unable to keep pace with the rapid development of digital economic transactions, resulting in numerous legal loopholes, breaches of norms, and even moral violations, which have become significant issues and pose a threat to public order.

The following are some of the functions of banks as state financial institutions that have been disrupted by financial technology:

Table 1
Functions of Banking Disrupted by Financial Technology

	Crowdfunding	Micro financing	P2P lending	Market Comparison	Digital Payment
Funding	V				
Financing		V	V		
Financial Services		V	V	V	
National Payment System Implementer (Agent)					V
Islamic Philanthropy Institution (Specially for Islamic banking)	V				

Source: Data processed by Researcher

Behind the massive development of Digital transactions, it cannot be denied that there are problems sufficient to encourage the Financial Services Authority (OJK) to immediately issue policies regarding the mechanisms of fundraising, fund distribution, and dispute resolution that occur between companies conducting digital transactions with consumers/customers. There are several cases of fintech companies that have become public spotlight to the point of involving YLKI (Indonesian Consumers Foundation) which received complaints from the public regarding privacy violations committed by fintech companies against their customers when collecting debts, especially fintech in the peer to peer landing scheme, Fintech Lending is also called digital loans and improving services in the financial industry is one form and function of fintech (Beno Jange, 2024) digital-based loans or commonly called online loans are a digital innovation in lending and borrowing funds facilitated by information technology, starting from how to apply, approval from the fintech organizer to the disbursement of the requested funds, all done digitally. The way online loans work is that the organizer acts as an intermediary, bringing together lenders and borrowers. Currently, many online lenders are registered with the Financial Services Authority (OJK). However, many online lenders operate without supervision or permission from the Financial Services Authority (OJK). This is known as illegal online lending (Irene Radius Saretta, 2025).

The problem with digital lending is not only the emergence of illegal online lending, but also fintech companies using a "landing scheme" to collect unpaid loans by defaming customers through their mobile phone numbers, even if these contacts may not have a good relationship or a debt contract with the customer. Therefore, in addition to defamation, which constitutes a criminal offense, there are also indications of a potential civil law violation. Article 1338 of the Civil Code states that agreements are legally binding only for the parties who entered into them or are included in the agreement. Parties outside the agreement are not responsible for, nor do they need to be aware of, the debts incurred by the parties agreeing, including loan agreements between fintech companies and their customers. Every day, cases arising from the uncertainty of the legal basis of agreements in fintech companies are having an increasingly broad impact on all elements of society. If this is not regulated, it is not impossible that fintech companies, in this case those engaged in the financing sector (Funding), will become the new face of loan sharks in the digital era, and this will be closely related and question the legal force and position of customers/consumers in agreements carried out digitally, the law of agreements that has been based on Book III of the Civil Code which is a legacy from the Netherlands, is considered no longer relevant to the current culture of economic transactions, Currently, the Regulations issued by the Government, namely (Arvante, 2022; Pratiwi et al., 2025).

Regulations on Peer to Peer Lending Financial Services Authority Regulation Number 77 / POJK.01 / 2016 concerning Information Technology-Based Money Lending and SEOJK Number 18 / SEJOK.01 / 2017 concerning Governance and Risk Management of Information Technology in Information Technology-Based Money Lending Services have not been able to reach the interests of legal protection for users of this service. Furthermore, the Financial Services Sector Consumer Protection Regulation, stipulated in POJK Number 1/POJK.07/2013, has not yet been applied to the peer-to-peer lending market because there is no regulation stating that peer-to-peer lending falls under the consumer protection regulations in the financial services sector. Second, legal protection of personal data is regulated in Article 26 of the ITE Law. Specifically, the protection of borrowers' personal data in online lending services is regulated in POJK No. 77/POJK.01/2016 concerning Information Technology-Based Money Lending Services.

In online lending transactions, all agreements made between the debtor and the lender are stipulated in an electronic contract as stipulated in Article 1, number 17 of the Electronic Information and Transactions (ITE) Law, which states that: "An Electronic Contract is an agreement between parties made through an Electronic System." The legal force of an electronic contract can also be seen in Article 18, paragraph (1) of the ITE Law, which states that, "Electronic Transactions outlined in an Electronic Contract are binding on the parties." This means that a transaction that becomes an agreement and is then outlined in an electronic contract is binding on the parties, which can be equated with.

Sumber : https://ojk.go.id/ (2025)

Violations committed by fintech lenders, in particular, have seriously contravened the Civil Code, which has long served as the legal basis for contracts in Indonesia. This is illustrated by:

1. Parties other than the parties to the agreement can bear the consequences of the agreement between the two parties. This is in stark contrast to Article 1338 of the Civil Code, which states, "All agreements legally made are valid as law for those who make them. An agreement cannot be revoked except by the mutual agreement of the parties or for reasons declared by law to be sufficient. An agreement must be executed in good faith."
2. There are elements of fraud in the name of fintech lenders to manipulate borrower data. This clearly violates Article 1320 of the Civil Code. Specifically, regarding the third requirement for a valid agreement,

namely a Certain Matter, fraud can be used as grounds for cancellation of the agreement, as reinforced by Article 1328 of the Civil Code.

3. Unscrupulous employees of fintech lending companies do everything they can to resolve problematic credit/financing issues faced by fintech lending companies, including defaming borrowers by calling all of their mobile phone numbers and even threatening and terrorizing borrowers' relatives if they do not immediately repay their credit/financing. This clearly violates Article 1320 of the Civil Code, specifically the fourth requirement, namely a lawful cause. More specifically, Article 1337 defines a prohibited cause as one prohibited by law if it is contrary to morality and public order. This case also violates Article 1338 of the Civil Code, which states that parties to the agreement may be affected by and suffer adverse consequences as a result of the agreement.
4. There is a violation of Article 1320 of the Civil Code, specifically regarding the terms of the agreement, because the calculation and repayment of the borrowed funds are only determined by one party, namely the owner of the fintech company, while the customer does not have the legal authority to disagree with the repayment amount determined by the fintech company. Hence, the customer has a weak position there.
5. All of the cases above also seriously damage the principle of Pacta Sunt Servanda, which has been the guideline for the parties agreeing that an agreement must be implemented in good faith, sincerely and honestly, so that in its implementation the agreement can run well and smoothly in accordance with the expectations of those who agreed. Violations that violate the law of agreements are also not in accordance with Islamic contract law, especially the rules of Islamic law, in principle the agreement (contract) is the agreement of the parties and the legal consequences are what they stipulate through promises, in accordance with the Word of Allah SWT: "O you who believe, fulfill the contracts (agreements)" Qs. Al-Maidah (5): paragraph 1. Islamic contract law is also a concern in this research, as the number of fintech lending services based on Sharia principles is increasing daily; therefore, Islamic contract law must also be able to accommodate the development of Sharia-compliant fintech lending.

   Changes to the Law of agreements and contracts are not limited to existing contract laws, but must also consider economic developments characterized by economic activities based on Sharia principles. We cannot deny the significant role of Sharia banking and non-bank Sharia financial institutions in contributing to Indonesia's economic development, nor can we overlook the enormous potential of the Sharia economy to become the largest in the world, given Indonesia's most significant Muslim majority (Sagita et al., 2025; Aulia et al., 2025). To formulate appropriate contract law policies in the current digital era, harmonization is needed with current economic developments, in which the role of Islamic Economics is decisive it. Therefore, as a basis for changes to contract law in this digital era, legal pluralism in the formulation of contract law cannot be denied, because it has occurred in the economic culture of society both in theory and practice, and various Islamic economic activities have been strengthened by the birth of Law Number 21 of 2008 concerning Sharia Banking, Law Number 19 of 2009 concerning Sharia Securities, and so on. Islam is a religion that encompasses comprehensive beneficial values , not only felt by Muslims but also by the wider community, because in Islam, it not only regulates the relationship between creatures and their God but also covers all aspects of human life as a whole, without exception, including contractual activities in economic and Business transactions.

Contracts or agreements must be based on legality made with applicable laws and regulations, in article 29 of the 1945 Constitution there is an interpretation that the state is very necessary to provide facilities to the Muslim population including in carrying out economic activities by using contracts based on Sharia principles, because for Muslims who are the majority of the Indonesian population it is very important to apply all rules including in carrying out economic transactions, especially for the needs of business and financial transactions coupled with developments that occur digitally in business transactions causing major changes in mechanisms, transaction culture, certainty and legal standing between two legal subjects who carry out transactions, and all these changes require the function of the state to facilitate the people (Muslims) so that the law originating from their religion can be formed into a regulation recognized by the state, because related to contracts based on Islamic religious principles, not only felt by Muslims but also all citizens, it is appropriate for the state to provide a specific regulatory basis regarding the application of Islamic contract law in economic activities, which until now the legal basis for Indonesian agreements has adhered to Book III of the Civil Code (Burgerlijk Wetboek) which is felt to be irrelevant to the development of current economic and business transactions that have been touched by technology, then the review for Preparing a new draft contract law that is in line with current developments and can accommodate the resolution of emerging disputes, as well as provide legal certainty and protection for transaction participants based on Sharia principles and based on the legal force of state contracts should be our collective focus, with the goal of ensuring that all transactions, both conventional and digital, can be conducted in a healthy manner, thereby creating order and legal certainty in economic activities.

Legal protection for parties entering into contracts based on Sharia principles is crucial to examine due to the differences in legal requirements and characteristics between conventional contracts (contracts based on the Dutch Civil Code) and contracts based on Islamic contract law, both of which have served as the legal basis for agreements entered into by Sharia financial institutions and other digital transactions conducted by fintech companies.

Therefore, the discussion of the certainty of the civil legal basis, especially the law of agreements in digital financing transactions for both conventional and Islamic economic-based fintech is very much needed, because the settlement and legal action for breaches of agreements and crimes in digital lending are only based on the Regulation of the Financial Services Authority of the Republic of Indonesia concerning Information Technology-Based Joint Funding Services (POJK 40/2024), Law No. 19 of 2016 concerning Electronic Information and Transactions, and Article 368 of the Criminal Code if the digital lender makes threats and violence, there is no specific legal certainty from the law of agreements and civil law, or in Islamic contract law.

Literature Review

The research conducted by Fatkhul Wahab and Moh. Ihsan, in the article "The Digital Revolution of Islamic Banking: Driving Islamic Financial Innovation in Indonesia," comprehensively examines the integration of digital technologies, including mobile banking, Islamic fintech, and blockchain technology, into Indonesia's Islamic financial services system. This study highlights how national regulatory support, such as policies from the Financial Services Authority (OJK) and Bank Indonesia, is a key driver of the adoption of these innovations. The results show that digitalization not only improves service efficiency, expands financial access, and accelerates transaction processes, but also encourages the participation of the digital-savvy younger generation. However, on the other hand, challenges arise related to infrastructure gaps in remote areas, low digital literacy among some communities, and the lack of uniform Sharia governance standards across digital platforms. These findings underscore the need to synchronize the substance of Sharia law with technological implementation to maintain Sharia values in the digital ecosystem (Wahab, 2025; Putri & Amri, 2025).

The link between technological developments and Sharia compliance is further strengthened by Husni Shabri's research in the article "Digital Transformation of the Indonesian Sharia Banking Industry." This study examines the impact of the COVID-19 pandemic on the acceleration of digitalization in the Sharia banking sector. The results indicate that the pandemic has acted as a strategic catalyst, prompting Sharia banks to prioritize digital innovation as a means to maintain and enhance their services. Significant increases have been seen in the number of customers, total assets, and digital transaction volume. In fact, fully digital Islamic banks, operating without physical offices, have emerged. This research emphasizes that the substance of Sharia law must accommodate new, entirely online business models while maintaining the principles of contracts and legal certainty of obligations in every transaction. Thus, these findings complement previous research by emphasizing that digital innovation must be accompanied by legal adaptation to ensure compliance with Islamic principles. (Husni Shabri, 2022).

Expanding the focus on adaptation strategies, Tiara Adelia Putri, Moh. Bahrudin and Anggun Okta Fitri, in their journal article "Digitalization Strategy for Islamic Banks to Increase Competitiveness," examined the concrete steps taken by Indonesian Islamic Banks to strengthen their competitive position amid global competition. The identified strategies included integrating Islamic fintech services, implementing blockchain for transaction transparency, utilizing big data for customer behavior analysis, and developing user-friendly mobile banking applications. The research results indicate that these strategies can enhance operational efficiency, expedite decision-making processes, and increase customer satisfaction levels by up to 25%. However, obstacles such as low digital literacy among users and the limitations of legacy technology systems remain. This research reinforces the previous conclusion that the substance of Islamic law must be adaptive to technological developments while maintaining the integrity of Islamic legal culture (Putri, 2025).

Methods.

Research Approach

This research employs a qualitative explanatory approach, utilizing a naturalistic research method. This approach was chosen to examine legal phenomena in their natural setting, where the researcher acts as a key instrument in collecting and analyzing data. This qualitative method emphasizes the search for meaning behind the observed data, rather than generalizations, and aims to explain the cause-and-effect relationships of a legal event or phenomenon. (John W. Creswell, n.d.) Furthermore, this research adopts a normative-comparative research method grounded in the theory of legal pluralism. This theory is used to analyze the diversity of laws prevailing in society, both state law and unstate law, such as customary law and Islamic law. The approaches employed include a conceptual approach, a case-based approach, and a statutory approach to provide a comprehensive legal analysis.

Data Types and Sources

The types of data used in this research consist of primary and secondary data. Primary data was obtained through a structured, normative legal study of regulations issued by the Financial Services Authority (OJK), specifically the Financial Services Authority Regulation (POJK) on Information Technology-Based Joint Funding (POJK 40/2024), as well as laws related to digital finance, digital financing, and digital financial transactions, as well as interviews with the National Sharia Council of the Indonesian Ulema Council (DSN-MUI). Secondary data was obtained through a literature review, including relevant journals, articles, and official documents. Legislation that served as secondary data sources included the Civil Code (KUHPerdata), Law Number 8 of 1999 concerning Consumer Protection, Law Number 19 of 2016 concerning Electronic Information and Transactions, Financial Services Authority Regulation Number 13/POJK.02/2018 concerning Digital Financial Innovation, Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector, OJK Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending Services, OJK Circular Letter Number 18/SEJOK.01/2017, Bank Indonesia Regulation Number 19/12/PBI/2017 concerning the Implementation of Financial Technology, as well as provisions of Islamic contract law in Indonesia, and the Fatwa of the Indonesian Ulema Council (MUI) National Sharia Council Number 117/DSN-MUI/IX/2018.

Data Collection Techniques

Data collection techniques were conducted using three primary methods. First, structured interviews with written question guidelines are used to ensure consistency of the information obtained. In this process, researchers can use tools such as voice recorders, images, or other supporting documents. Second, documentation studies utilize secondary data from laws and regulations, legal documents, scientific articles, and literature relevant to the research topic. Third, case studies examine concrete cases involving victims of illegal digital lending crimes in depth, thus obtaining a factual and comprehensive picture of the legal issues being studied.

Data Processing and Analysis Techniques

The data processing and analysis process is carried out in several stages. Before entering the field, researchers analyze preliminary studies and secondary data to determine the research focus, which is still preliminary. During the fieldwork, data analysis is conducted using the Miles and Huberman model, which includes data reduction, data display, and conclusion drawing/verification until data saturation is achieved. Next, a phenomenological analysis was employed, involving data organization, reading and memoing, categorizing data into codes and themes, grouping statements into meaningful units, and interpreting textual and structural data to uncover the essence of the phenomenon under study. The results of this analysis were then presented in narrative form, tables, or relevant visualizations. The final stage of the analysis was to integrate empirical findings with normative studies, resulting in a comprehensive examination of online loan agreements from both civil law and Islamic contract law perspectives.

Results and Discussions.

Islamic Contract Law and Contract Law based on the Civil Code in Digital Financing

Contract law, as a fundamental pillar of property law, occupies a central position in supporting the economic and social order of Indonesian society. Since the enactment of the Civil Code (KUHPerdata) in 1948, the principles enshrined therein have served as the primary foundation for every obligatory civil relationship. Despite its decades-long history, the relevance of contracts has never waned; in fact, it has become increasingly vital in addressing the complexities of modern transactions that demand legal certainty and protection for all parties. Contracts are not merely promises, but binding legal instruments that create rights for one party and obligations for the other, forming an irreplaceable framework for every economic interaction. (Dian Latifiani, 2020)

Article 1233 of the Civil Code explicitly states that contracts arise from agreement or statute. This dichotomy serves as a theoretical and practical starting point for understanding the entire legal construction of contracts. However, this understanding should not be limited to the textual level but must be deeply critiqued to uncover the philosophical nuances behind it. Contractual agreements reflect the autonomy of the will, where individuals are given complete freedom to form legal relationships according to their agreements, a manifestation of classical liberalism. Conversely, contracts derived from law often indicate state intervention, which is typically aimed at protecting the public interest or the interests of weaker parties, thereby placing strict limits on the freedom of contract. (Reni Ayu Anggriani et al., 2024)

This intervention, often seen in specific laws and regulations, actually serves as a correction to potential injustices that may arise from absolute freedom. Take, for example, consumer protection laws or employment laws that proactively limit the clauses that parties can agree upon. These restrictions are not barriers to freedom, but rather constructive regulations that ensure the freedom enjoyed does not lead to exploitation. Therefore, the dichotomy between agreement and law is not two completely separate entities, but rather two sides of the same coin that complement and correct each other, creating a dynamic balance in contract law. (H.Matnuh, 2021) The principle of freedom of contract, often considered the highest principle, actually has obvious and inviolable boundaries. These boundaries include compliance with the law, morality, and public order, as stipulated in the articles of the Civil Code. This argument emphasizes that freedom of contract is not a license to act arbitrarily, but rather a right subject to applicable ethical and legal boundaries. Violation of these boundaries, for example, by entering into an agreement that contradicts moral norms, will render the agreement invalid and non-binding. This is the essence of limited autonomy, a principle that keeps contract law relevant and just. (Dwi Atmoko, 2022)

Furthermore, the principle of consensualism is also key in the formation of agreements, where agreement alone is sufficient to create an obligation. This principle offers significant flexibility, allowing parties to enter into agreements without being burdened by complicated formalities. However, in the modern context, this principle often clashes with the need for stronger authentication, particularly in high-value transactions or those related to land rights. Nevertheless, consensualism remains the foundation, with formalities serving as a prerequisite for proof (evidence) rather than a requirement for the validity of an agreement, unless expressly stipulated by law (Niru Anita Sinaga, 2018).

The conditions for a valid agreement stipulated in Article 1320 of the Civil Code—agreement, capacity, a specific matter, and a lawful cause—are essential filters for ensuring the validity of an agreement. These four conditions are not only cumulative but also have distinct legal consequences if not met. The subjective conditions, namely agreement and capacity, if flawed, will only render the agreement voidable (vernietigbaar), giving the aggrieved party the option to sue for cancellation. This means that the agreement remains valid as long as no court decision annuls it, thereby indicating respect for the initial consensual agreement. (Muhammad Romli, 2021)

On the other hand, objective requirements, namely specific matters and lawful causes, serve as safeguards for the integrity of civil law as a whole. Failure to comply with these requirements, for example by promising something illegal or unspecified, will render the agreement null and void (nietig). This means that the agreement is deemed never to have existed in the first place and never gave rise to a valid obligation. This difference in legal consequences suggests that objective requirements are more crucial in maintaining the legal order and public interest, and therefore, their violation is considered more serious (Pius Eliadi Hia, 2024).

Although these four requirements are precise, the challenges of their interpretation continue to evolve as technology advances and new types of transactions emerge. The concept of "capacity," for example, must now be viewed in the context of digital capacity, where the validity of electronic agreements is a crucial issue requiring progressive interpretation. Agreements made through digital platforms, which do not involve face-to-face meetings, require more detailed capacity criteria to prevent fraud and ensure the authenticity of the will. Therefore, contract law cannot stand still, but must actively adapt, seeking new interpretations that meet the needs of the times without abandoning its fundamental foundations (Nizla Rohaya, 2023).

In the context of digital financing, challenges to contract law are becoming increasingly real and pressing. Fintech (financial technology) business models that rely on algorithms and artificial intelligence, such as online loans or peer-to-peer lending, present new challenges. Agreements are no longer marked by a physical signature, but rather through a click of approval or biometric validation, the validity of which remains a matter of debate. Contracts arising from this scheme require a reinterpretation of fundamental principles, particularly regarding consumer protection, which is often in a weaker position when faced with the power of technology and capital. (Afifa Nur Hasanah, 2024)

Furthermore, contracts in digital financing often involve standard terms that tend to disadvantage debtors, such as high interest rates or severe sanctions. This practice has the potential to violate the boundaries of public order and morality as stipulated in Article 1337 of the Civil Code. Contract law must act as a check and balance, ensuring that the freedom of contract enjoyed by digital service providers does not become a tool for predatory lending practices. Therefore, a robust regulatory framework is necessary to prevent exploitation and ensure that every contract resulting from digital financing is founded on the principles of justice and fairness. (Riris Nisantika, 2022)

The development of digital financing has also given rise to the phenomenon of electronic contracting, where the entire obligation cycle, from offer to fulfillment and termination, is conducted entirely electronically. This phenomenon requires an adjusted interpretation of the concept of default, which now encompasses not only physical delays but also system failures or data privacy violations. Traditional contract law, accustomed to conventional evidence, must begin to consider the validity of transaction logs, digital timestamps, and electronic communication records as valid evidence. This demonstrates that contract law is challenged to become more adaptive and inclusive of non-traditional forms of contract. (Fabio Bassan, 2024)

Furthermore, the issue of digital identity and legal liability becomes crucial in digital financing contracts. The legitimacy of the parties' competencies, previously verified face-to-face, now relies on electronic validation such as ID card photos, facial verification, or digital fingerprints. The question is, what if digital identity misuse or phishing occurs, resulting in a contract without free will? Contract law must provide substantial assurance that every digital agreement truly reflects the authentic will of the individual concerned, so that legal liability can be enforced fairly. (Nima Ballaji, 2024)

Furthermore, the collateral model in digital financing has also undergone a significant shift. While traditional contracts relied on physical collateral such as land or vehicles, digital contracts now utilize digital footprints or algorithm-based credit scoring as collateral. Transaction history data, digital behavior, and credit scores have become the primary determinants of loan eligibility, replacing the traditional role of tangible collateral. This shift challenges contract law to develop a broader concept of collateral, extending beyond physical objects to include data and information with economic value. (Ika Rosalika, 2024).

The aspects of execution and dispute resolution are also important topics for discussion. When defaults occur in digital financing, the collection process is often conducted through intimidating or unethical means, which can conflict with morality and public order. Furthermore, resolving digital contract disputes through conventional court channels is often considered too slow and inefficient. Therefore, contract law must encourage the development of alternative dispute resolution (ADR) mechanisms, such as mediation or digital arbitration, that can provide swift and fair solutions for the parties(Nurhisyam, 2024)

Performance, as the object of a contract, is at the heart of every contractual relationship, obligating the debtor to deliver something, do something, or refrain from doing something. Clarity regarding the form and substance of this performance is an absolute prerequisite to avoid ambiguity and potential future disputes. The debtor's inability to fulfill its contractual obligations, commonly referred to as default, constitutes a serious breach of the agreed-upon contract, thereby threatening legal certainty. This concept is not merely a failure, but an act of breach of promise that can be legally accountable. (D. Vallensia, 2025)

The consequences of default, which can include compensation, cancellation of the agreement, or transfer of risk, confirm that contract law has strong enforcement mechanisms. However, its implementation in practice is not always easy, especially in determining a fair amount of compensation. Calculating compensation, including costs, damages, and interest, is often the subject of lengthy and complex debates that require specialized expertise. Therefore, in addition to the theoretical foundation, the successful enforcement of contractual obligations depends heavily on the precision and firmness of proving breach of contract and calculating the losses suffered (Badri, 2018).

The mechanism for terminating a contract, as stipulated in Article 1381 of the Civil Code, provides a comprehensive spectrum for parties to terminate their legal relationship. However, in modern practice, termination of a contract does not always occur through one of these ten methods, but often also occurs through previously agreed-upon conditions. Clauses such as force majeure or unilateral termination clauses (if applicable) are now prevalent instruments in commercial contracts. This demonstrates a significant evolution, with parties tending to be more proactive in formulating the termination of their obligation(Apriyani, 2021) Payment, as the most common method of extinguishing an obligation, represents the complete and voluntary fulfillment of an obligation by the debtor. However, this concept of payment is not limited to the transfer of money but also includes the fulfillment of any other performance. In this context, novation or renewal of debt demonstrates the flexibility of obligation law, allowing parties to reconstruct the existing legal relationship without having to terminate the obligation altogether. This is a concrete example of how obligation law provides adaptive solutions for parties wishing to modify their commitments(Elisabeth & Koeswarni, 2024).

Offering cash payment followed by deposit or custody is a legal mechanism that provides protection for debtors from uncooperative creditors. This procedure allows debtors to deposit the money or goods owed in court, thereby deeming them to have fulfilled their obligations and being released from their obligations. This demonstrates that the law of obligations not only protects creditors but also guarantees the rights of debtors, creating a fair balance in obligatory relationships. Without this mechanism, debtors would remain vulnerable, even if they had acted in good faith to fulfill their obligations(Asmin, 2024).

Setoff and commingling are two methods of extinguishing an obligation that often occur automatically under legal provisions. Setoff, for example, occurs when two individuals owe each other an equal amount of money. This mechanism simplifies complex legal relationships and avoids cumbersome payment processes. This argument emphasizes that contract law, with its efficient principles, strives to create efficiency in the settlement of obligations without unnecessary processes (Mandang, 2024).

Overall, despite the Civil Code's age, the principles of contract law within it remain a solid and relevant foundation. However, this relevance is not static, but rather dynamic, demanding progressive and adaptive interpretations to current developments. Basic principles such as freedom of contract and consensualism must continue to be examined in a modern context, while the mechanism for extinguishing a contract must be understood as a basis that can be modified by agreement between the parties. Thus, contract law functions not only as a regulatory norm but also as an empowering instrument, enabling parties to establish legal relationships that are legitimate, fair, and beneficial.

Contract law in Islam, widely known as fiqh muamalah, is a systematic and comprehensive discipline of Sharia law. This discipline specifically regulates all aspects of human interaction related to property, commercial transactions, and the fulfillment of reciprocal obligations. Fundamentally different from contract law in conventional juridical systems, which tend to be secular, fiqh muamalah bases all its rules on primary sources of Islamic law. These sources include the Qur'an and the Sunnah (the hadith of the Prophet Muhammad), and are supported by ijma' (consensus) and qiyas (analogy). Its primary orientation is to realize distributive and commutative justice in every economic interaction (Gemala, 2018).

The primary goal of establishing Islamic contract law is to create a just and economically balanced societal order. This means minimizing all forms of oppression, exploitation, and detrimental practices, as emphasized by scholars. Furthermore, Islamic contract law seeks to ensure the achievement of holistic socio-economic welfare for all parties involved in a transaction or contract. Umer Chapra emphasized that Fiqh Muamalah is not only about legality, but also economic ethics aimed at the maqashid sharia (Osman, 2022) Wahbah al-Zuhaili also emphasized that the objectives of sharia (maqashid al-sharia) are the main foundation for formulating and implementing this contract law, thereby guaranteeing public welfare (Anwar, 2024).

One of the fundamental principles of Islamic contract law is the Freedom of Contract (al-hurriyah al-ta'aqqudiyah). This principle affirms that individuals are essentially free to enter into agreements or contracts as needed. However, this freedom is not absolute, but somewhat limited by Islamic law, which prohibits practices that are considered harmful. (Abdul Latip, 2021) Imam Syafi'i and Imam Ahmad believe that this freedom must be aligned with the principle of maslahah (benefit). Yusuf al-Qaradawi emphasized that the original principle in transactions is permissibility (al-asl fi al-muamalat al-ibahah), as long as there is no explicit evidence prohibiting it.

Another crucial principle is Justice ('Adalah), which emphasizes that every transaction or contract must be carried out based on the proportional distribution of rights and obligations. No party is permitted to be disadvantaged or benefited disproportionately or unfairly, ensuring transparency. This justice encompasses various aspects, from determining fair prices, ensuring the appropriate quality of goods or services, to fulfilling all rights and obligations of each party transparently (Monawer, 2022) Ibn Taymiyyah strongly emphasized the importance of justice in every contract as part of siyasah syar'iyyah (sharia policy). Taqi Usmani consistently emphasized the necessity of justice in Islamic financial instruments.

Furthermore, the principle of mutual consent (taradlin) is the foundation of a valid contract, indicating genuine agreement. This requires that every agreement be based on the sincere consent of both parties to the transaction, without coercion or pressure. There must be no element of coercion, deception (tadlis), intimidation, or substantial error (ghalath) that could invalidate this consent. The Word of Allah SWT in Surah An-Nisa', verse 29, explicitly emphasizes the urgency of transactions carried out on the basis of mutual consent ('an taradlin minkum). Islamic jurists agree that the absence of valid consent, due to defective will, will render the contract invalid (fasid) or void (batil). (Fahmi Irfanudin, 2023)

Clarity and transparency are crucial in preventing potential future disputes and fostering trust. This principle prohibits excessive uncertainty (gharar) and ambiguity (jahalah) in a contract, as emphasized in numerous hadith. Information regarding the object of the contract, its price, terms, and conditions must be known with certainty and transparently by both parties before the contract is entered into. (Muhammad Izzam Affero, 2024) Imam Shafi'i and Imam Hanafi are among the jurists who are very strict in prohibiting transactions containing elements of gharar fahish (extreme gharar) and jahalah. Abdus Sattar Abu Ghuddah, a member of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), frequently discusses the application of the gharar prohibition to complex Islamic financial products to ensure transparency.

One of the fundamental prohibitions in Islamic jurisprudence (fiqh muamalah) is the prohibition of riba (usury), which is considered an exploitative practice. Riba is defined as an unlawful addition or profit in the exchange of similar goods of unequal value (riba al-fadl), or an excessive addition to a loan over time (riba al-nasiah). This prohibition is strongly emphasized in the Qur'an and Sunnah because it is considered an unjust practice that distorts the distribution of wealth, diverting investment from the real sector. (Elif Pardiansyah, 2022) Muhammad Nejatullah Siddiqi agrees that the prohibition of riba aims to encourage transactions based on profit-and-loss sharing. Wahbah al-Zuhaili emphasized that the prohibition of riba is based on consensus without any difference of schools of thought, and is one of the pillars of Islamic economics.

Another important prohibition is the prohibition of maysir (gambling) and gharar (excessive uncertainty), which are often closely related in practice. Maysir specifically refers to any form of gambling or transactions involving pure luck without significant effort or contribution, as mentioned in the Quran. This practice is strictly prohibited because it can create wealth without legitimate hard work and undermine productive values in society. The relationship between maysir and gharar is very close, with excessive gharar often serving as a gateway to maysir practices, such as speculative derivatives trading. Transactions containing elements of pure speculation are prohibited because they have the potential to cause significant harm to one of the parties and create economic instability. (Burhan Uluyol, 2024)

In general, the essential elements or pillars that must be met for a valid contract in Islam include three main aspects. First, there are contracting parties ('aqidan), who must have full legal capacity to conduct the transaction. Second, there is the object of the contract (ma'qud 'alaih), which is the substance of the agreement and must be lawful. Third, there is sighat (ijab and qabul), which is the expression of the parties' will that indicates agreement. (Akhmad Hulaify, 2019) These three pillars must be present and fulfilled simultaneously for the contract to be considered valid according to Sharia, as agreed by the majority of Islamic jurists from various schools of thought.

Details regarding the contracting parties ('aqidan) require that they be legally competent individuals (ahliyyah). This means they must be baligh (adult), sane (not insane or mentally disturbed), and have full authority (wilayah) to conduct the transaction and bind themselves. Furthermore, the parties must be in a state of mutual consent without any coercion or other defects of will. (Feby Ayu Amalia, 2022) Islamic jurisprudence experts emphasize that if one party does not meet the requirements of legal capacity, or enters into a transaction under unlawful duress, the contract can be invalid (batil) or at least defective (fasid). In the current context, the legality of legal entities, such as corporations, as parties to a contract is also discussed, recognizing the legitimacy of corporations.
The object of the contract (ma'qud 'alaih) must meet several crucial requirements for the contract to be valid and free from prohibited elements. The object must exist at the time of the contract or at least be certain of its existence in the future (e.g., in a salam contract). The object must also be unambiguous, halal (excluding goods or services prohibited by Sharia, such as alcohol or gambling), and have recognized economic value (mutaqawwim). Furthermore, the object must be capable of being delivered (maqdur at-taslim) by the seller or service provider without unreasonable difficulty. (Dery Ariswanto, 2021) Legal experts argue that transactions involving non-existent or unclear objects can fall into the prohibited category of gharar, thus invalidating the contract.

The third pillar is sighat (ijab and qabul), which is a tangible manifestation of the agreement between the two parties and is legally binding. Ijab is a statement of offer from one party, while qabul is a statement of acceptance from the other party. Sign language can take various forms: verbally (clear speech), in writing (a signed contract document), or even through generally understood gestures, especially for those who are unable to speak. (Muhammad Harfin Zuhdi, 2017) According to the majority of legal experts, a contract is considered complete and binding when the ijab and qabul have occurred continuously and demonstrate a precise alignment of wills. Yusuf al-Qaradawi specifically discusses the validity of sighat in electronic form in the digital age, which is now accepted by many Islamic legal councils.
In the context of types of contracts, Sale and Purchase (bai') is the most fundamental and frequently occurring contract in the daily lives of Muslims. Bai' is defined as the exchange of goods for money on a voluntary and

transparent basis. (Fadilatunnisa, 2025) In Islam, various variations of sale and purchase have been developed to meet the needs of society and special conditions. Examples are murabahah, which is a sale and purchase with a profit that has been agreed upon in advance; salam, a sale and purchase order for goods to be produced in the future; and istishna', a sale and purchase based on an order for the manufacture of certain goods. The fundamental difference lies in the aspects of transparency regarding price, ownership, and delivery time, ensuring Sharia compliance.

A loan (qordh) is a mutual agreement in which one person lends money or similar goods to another. The main stipulation is that the loan must be repaid in the same amount without any additional interest or profit. Qardh in Islam is known as qardh hasan (good loan), meaning a loan without interest and without any compensation, purely as a form of charity. This is significantly different from the interest-based loans characteristic of conventional financial systems, which prohibit usury. Legal experts emphasize that any additional requirements in qardh fall into the category of prohibited usury, unless they are real, reasonable administrative costs permitted by Sharia.

Musyarakah (profit-and-loss sharing) is a form of partnership in which two or more parties contribute capital, business, or a combination of both. Profits from the venture are shared according to a mutually agreed-upon ratio, while losses are borne proportionally according to the capital contributed. This form is considered an ideal financing model in Islamic economics because it promotes fairness, balanced risk sharing, and investment in the real sector. Monzer Kahf promotes musharakah as an ethical alternative to debt-based systems. Taqi Usmani also strongly advocates for the implementation of musharakah, including musharakah mutanaqisah (gradual decrease), in Islamic banking practices. The mudharabah (capital and business partnership) contract is a variation of a partnership in which one party (the capital owner) provides all the capital. In contrast, the other party (the mudharib) provides expertise or business in managing the capital. Profits from the project are shared according to a pre-agreed ratio. However, if losses occur without negligence or violation by the mudharib (such as ta'addi or taqshir), the entire financial loss is borne entirely by the capital owner. This model is widely applied in Islamic banking, such as savings and investments, to facilitate interest-free project funding.

In the contemporary context, Islamic Contract Law faces significant challenges in adapting to the complex and rapid dynamics of the global economy, including the emergence of financial technology (fintech). This includes harmonization with positive legal systems in various countries, as well as the development of innovative Islamic financial products that remain Sharia-compliant. Fintech, with innovations such as Sharia-compliant peer-to-peer lending and Sharia-based crowdfunding, requires careful interpretation of Islamic law (fiqh) to ensure its compliance with Islamic principles. Mahmoud El-Gamal frequently discusses how the principles of Islamic law (fiqh muamalah) can be applied in modern financial instruments, such as sukuk (Sharia-compliant bonds) or Sharia-compliant mutual funds, and this is now also relevant to fintech business models. The development of fintech within the Sharia economy has also attracted the attention of fatwa institutions. In Indonesia, the National Sharia Council of the Indonesian Ulema Council (DSN MUI) has issued several fatwas related to Fintech. These fatwas provide Sharia legal guidance for Fintech industry players and the broader community—for example, DSN MUI Fatwa No. Decree No. 117/DSN-MUI/IX/2017 concerning Sharia Information Technology-Based Financing Services provides a framework for Sharia peer-to-peer lending. This fatwa demonstrates a commitment to ensuring that technological innovation remains aligned with the principles of Islamic jurisprudence (fiqh muamalah), thereby preventing the practice of usury (riba), gharar (gharar), and maysir (risk of betting) within the digital ecosystem.

The DSN-MUI fatwas play a crucial role in providing certainty under Sharia law for Sharia fintech businesses in Indonesia. They not only determine permissible or impermissible laws but also provide detailed guidelines regarding the pillars, conditions, and models of Sharia-compliant contracts on digital platforms. These fatwas are the result of in-depth studies involving Sharia experts and economic practitioners, reflecting collective ijtihad (initiative). With this guidance, fintech innovation can proceed on the right track, maintaining Sharia integrity by avoiding prohibited practices. The importance of these fatwas also lies in their ability to adapt to new business models, ensuring that the principles of Islamic jurisprudence remain relevant in a rapidly changing technological environment. Understanding the basic principles, pillars, conditions, and various types of contracts is crucial for analyzing modern transaction practices and financial innovations, such as fintech. Its relevance is growing amidst calls for a fairer and more sustainable economic system, offering a solid alternative to the often problematic conventional model.

Conclusion

The state's obligation to fulfill the people's rights, in this case, is to guarantee the freedom to conduct economic transactions in accordance with their respective religions and to worship according to their beliefs. This is as stated in Article 29 paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia, which reads: Article 29 Paragraph 1: "The State is based on the One Almighty God." Article 29 Paragraph 2: "The State guarantees the freedom of each citizen to adhere to their respective religion and to worship according to their religion and beliefs." Hazairin's interpretation of this paragraph can be understood as meaning that the Republic of Indonesia is obliged to provide facilities so that laws derived from the religions embraced by the Indonesian people can be implemented, as long as the implementation of these religious laws requires the assistance of state authorities or government officials. Regarding the interpretation of Article 29 of the 1945 Constitution, the state needs to be present to facilitate the Muslim population. This is because Islam is a comprehensive religion. Islam does not merely regulate the relationship between humans and God.

It also encompasses a complete and integral social system and way of life. Contracting activities are no exception. In Islamic law, contracts are a key component of Fiqh Muamalah (Islamic Law) and are closely tied to economic and social affairs. Therefore, all Muslim contractual activities must not conflict with the Qur'an and Sunnah. A contract or agreement must be legally binding and drawn up in accordance with applicable laws and regulations. As discussed above, Islam has regulations in various fields, particularly in law and economics. For Muslims, it is crucial to implement all regulations in all areas of life, including economic transactions, particularly in matters of financial need. This is where the state's role is to facilitate the people's adherence to the laws derived from their religion (in this case, Islam) by establishing regulations related to Sharia contracts. The state should establish detailed regulations regarding the application of Islamic contract law in financial business activities to provide legal protection for those involved in transactions based on Sharia principles and ensure order in the application of its laws in practice.

This is in addition to the mandate of the 1945 Constitution for the state to guarantee freedom of religion and worship. The fact that the majority of Indonesia's population is Muslim, as well as the massive growth of the halal business industry over the past decade, cannot be overlooked. These factors further illustrate the significant number and interests that the state needs to accommodate as a practical means of fulfilling its obligation to guarantee freedom of religion and worship. The need to accommodate legal provisions governing Sharia contractual activities also serves as an effort to achieve legal certainty. Legal certainty refers to the desire to fulfill the needs of parties to obtain legal protection and maintain public order through healthy economic and business activities. Striving for and realizing legally

binding protection for parties to contracts based on Islamic Sharia is crucial for discussion and research. Legal protection for parties entering into contracts based on Islamic Sharia is a crucial issue to discuss in this research, particularly regarding the legal certainty of digital financing transactions, which have resulted in numerous victims and disrupted public order. This is due to the differences in the legal requirements and characteristics of contracts inherited from the Burgerlijk Wetboek (conventional contracts), contracts based on Western Law (KUHPerdata), and Sharia contracts. Under Western law, forming a conventional contract or agreement must meet four requirements, as stated in Articles 1320 to 1446 of the Civil Code (KUHPerdata). In contrast, Sharia contracts have specific pillars and conditions that must be met.
Legal protection for parties entering into contracts based on Islamic Sharia is an important issue to include in this research due to the differences in the legal requirements and characteristics between conventional contracts (contracts based on Western Law (KUH Perdata) and Sharia contracts. Under Western law, forming a conventional contract or agreement must meet four requirements, as stated in Articles 1320 to 1337 of the Civil Code. (Civil Code), while Sharia contracts have pillars and conditions that must be met. The fundamental difference between the two is the legitimate reasons. The permissible reasons required in conventional contracts are that the contract is not permitted or becomes prohibited if it is prohibited by law, contrary to morality, or public order.

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